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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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September 20, 2002

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

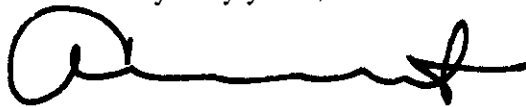
Re: MM Docket No. 02-197
RM-10509

Dear Ms. Dortch:

On behalf of Miller Communications, Inc., transmitted herewith is the original and four copies of "Comments on Notice of Proposed Rule Making", filed pursuant to Sections 1.415 and 1.420 of the Commission's Rules, and in response to the Commission's *Notice of Proposed Rule Making (Bishopville and Lamar, South Carolina)*, in the above referenced rule making proceeding.

If any question arises in connection with these Comments, please contact the undersigned.

Very truly yours,



Gary S. Smithwick

GSS/sls
Enclosures

cc with enclosure: Barthen R. Gorman, Esquire, FCC, Room 3-A224

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Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of) MM Docket No. 02-197
) RM-10509
Amendment of Section 73.202(b))
(Table of Allotments))
FM Broadcast Stations)
)
Bishopville and Lamar, South Carolina)

To: Assistant Chief, Audio Division
Media Bureau

COMMENTS ON NOTICE OF PROPOSED RULE MAKING

Miller Communications, Inc. ("Miller") by its attorneys, and pursuant to Section 1.415 and 1.420 of the Commission's Rules, hereby respectfully files these Comments on the Commission's *Notice of Proposed Rule Making (Bishopville and Lamar, South Carolina)*, DA 02-1805, released August 2, 2002 ("NPRM"). Comments are due by September 23, 2002, so these Comments are timely filed. The NPRM proposes to modify the Table of Allotments (47 C. F. R. §73.202 (b)) to change the allotment of FM Channel 229A from Bishopville, South Carolina, to Lamar, South Carolina, with a concurrent modification of the license of WKHT(FM), Bishopville (Facility ID No. 55269), to operate on Channel 229A at Lamar. In support whereof, the following is shown:

1. WKHT(FM), Channel 229A, Bishopville, SC, is licensed to Miller. Miller requests the Commission to delete Channel 229A from Bishopville and to reallocate it to Lamar, South Carolina, with a concurrent modification of the license of WKHT to operate on Channel 229A at Lamar. This change is permissible under Section 1.420(i) of the Rules, which authorizes the Commission to modify the license or permit of an FM station to specify a new community of

license where the amended allotment would be mutually exclusive with the licensee's present allotment.

2. Two factors must be demonstrated in order to change a station's city of license in a rule making proceeding: (1) the channel changes must be mutually exclusive, and (2) the rule making must not deprive a community of an existing service representing its only local transmission service. The Commission stated that in making the determination of whether to amend the Table of Assignments it would "take into account the totality of the service improvements resulting from a proposed change in community of license in determining whether an allotment proposal should be approved." *See Modification of FM and TV Authorizations (New Community of License)*, 4 FCC Rcd 4870 [66 RR 2d 877] (1989). Miller's proposal is consistent with the rules and Commission policies, i.e., the channel changes are mutually exclusive, and as shown *infra*, the rule making will not deprive Bishopville of its only local transmission service, as WAGS(AM), 1380 kHz, will remain licensed to Bishopville.

Expression of Continuing Interest

3. As Miller stated in its Petition for Rule Making, if the Commission allots Channel 229A to Lamar, Miller will promptly file an application for a minor change construction permit to operate WKHT at Lamar, and upon grant, will promptly construct and operate the facilities.

Bishopville, South Carolina

4. According to the U.S. Census, Bishopville had a 2000 population of 3,670 persons. Bishopville has two commercial broadcast stations, WKHT(FM) and WAGS(AM). Thus, Bishopville will not be deprived of its only transmission service if the Commission reallots Channel 229A to Lamar.

Lamar, South Carolina

5. Lamar is listed in the U.S. Census as a town which had a 2000 population of 1,015 persons. Lamar is located in Darlington County, South Carolina. Lamar is an incorporated city in southern Darlington County, South Carolina. Lamar is governed by a mayor and four-member city council. Lamar has numerous businesses, churches and residences as well as police department, water and sewer department and schools (elementary and high school). Therefore, Lamar possesses the requisite "social, economic and cultural components that are commonly associated with community status." *See, FM Table of Allotments (East Hemet, CA)*, 67 RR 2d 146, 147 (1989). WKHT would bring first local service to Lamar, since Lamar currently does not have a local station. According to the technical statement, from the reference coordinates at **North Longitude 34° 07' 10", West Longitude 80° 08' 49"** -- the present WKHT tower site -- the proposed 70 dBu contour of WKHT would not penetrate any designated Urbanized Area, and Lamar is not located in an Urbanized Area. Since no Urbanized Area is covered, there is no requirement to provide a showing pursuant to *Headland, Alabama, and Chattahoochee, South Carolina*, 10 FCC Rcd 10342 (1995) that stations licensed to urbanized areas should not be attributed to Lamar. *See, Rose Hill, Trenton, Aurora and Ocracoke, North Carolina*, DA 96-2062, released December 13, 1996. Without question, Lamar warrants a first local service preference.

Section 307(b) Analysis

6. In determining which proposal will better serve the public interest, the Commission is guided by the allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). Under priority three, first local service, Lamar warrants a

preference for bringing a first local service to Lamar over retaining WKHT in Bishopville as a second local service.

Other Public Interest Considerations

7. In changing its community of license, no transmitter site relocation for WKHT is necessary. Therefore, there are no gain or loss areas to be considered. The allocation site meets all known constraints. As noted above, since Bishopville will continue to enjoy service from WAGS, Miller's proposal will not deprive Bishopville of its only local transmission service.

8. As shown in the Engineering Statement already a part of the record, Lamar would be entirely covered by a 70 dBu or better signal from WKHT. Thus, modification of the license for WKHT would be consistent with the Commission's city-grade contour coverage requirements.

9. The Commission's priorities for assigning FM allotments are set out in *Revision of FM Assignment Policies and Procedures, supra*. They are: (1) first aural service, (2) second aural service, (3) first local service, and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). Here, as noted *supra* first local service to Lamar is greatly preferred to retaining two local services to Bishopville. Thus, there would a preferential arrangement of allotments resulting from the allotment of Channel 229A to Lamar.

WHEREFORE, Miller respectfully requests the Commission to amend Section 73.202(b) of the Commission's Rules, as follows:

	<u>South Carolina</u>	
	<u>Present</u>	<u>Proposed</u>
Bishopville	229A	--- ¹
Lamar	---	229A

¹WAGS(AM) is to remain licensed to Bishopville.

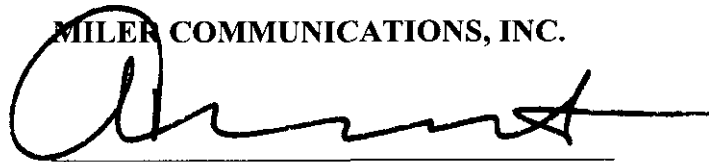
Conclusion

Miller requests the Commission to allot Channel 229A to Lamar, South Carolina, and modify the license of WKHT to operate on FM Channel 229A at Lamar. If the Commission so modifies the license of WKHT, Miller will timely file an application for minor change construction permit to operate WKHT at Lamar, and upon grant thereof, Miller will construct the new facilities and operate them.

Respectfully submitted,

MILER COMMUNICATIONS, INC.

By:



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September 20, 2002